

PROVIDING FOR THE CONTINUANCE OF OPERATIONS UNDER CERTAIN MINERAL LEASES ISSUED BY THE RESPECTIVE STATES COVERING SUBMERGED LANDS OF THE CONTINENTAL SHELF AND AUTHORIZING THE SECRETARY OF THE INTERIOR, PENDING THE ENACTMENT OF FURTHER LEGISLATION, TO GRANT OIL AND GAS LEASES ON SAID SUBMERGED LANDS

FEBRUARY 4 (legislative day, JANUARY 10), 1952.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. J. Res. 20]

The Committee on Interior and Insular Affairs, to whom was referred the resolution (S. J. Res. 20) to provide for the continuation of operations under certain mineral leases issued by the respective States covering submerged lands of the Continental Shelf, to encourage the continued development of such leases, to provide for the protection of the interests of the United States in the oil and gas deposits of said lands, and for other purposes, having considered the same, report favorably thereon with amendments, and with the recommendation that the bill, as amended, do pass. Some members of the committee have, however, reserved the right not to be bound by the committee action when the measure is called for consideration on the floor.

EXPLANATION OF MEASURE

Senate Joint Resolution 20, as amended, is designed to permit the immediate resumption of exploration and development of the vast undersea oil reserves lying off the coasts of the United States without awaiting the decision of the Supreme Court with respect to the boundaries of inland navigable waters, or allowing the resources to lie idle while another bill to surrender Federal rights to lands submerged by the open ocean goes through the time-consuming and fruitless struggle to overcome the promised veto.

The resolution would accomplish this purpose through the following main provisions:

(1) Good faith leases issued by the States to private operators are accorded Federal recognition as promised by the Federal Government in the Supreme Court, and such leases, providing they meet certain standards set forth in the measure, may be maintained under the administrative supervision of the Secretary of the Interior.

(2) The Secretary of the Interior is authorized to issue new leases by competitive bidding on unleased portions of the Continental Shelf but, for a period of 5 years, this authority may be exercised within the seaward boundaries of a State only with the prior approval of the proper State officials. "Seaward boundaries" are defined in the resolution as a line 3 miles distant from the line of mean low tide, in accordance with the Supreme Court decisions. Lands beneath inland navigable waters, including bays, harbors, and inlets are not claimed by the Federal Government and therefore are left to the States and are not subject to leasing by the Secretary.

(3) Thirty-seven and one-half percent of the revenues, such as bonus payments, rents, and royalties from operations within the seaward boundary of a State are granted to the State. All other revenues are to be held in the Treasury in a special fund for disposition by the Congress.

Other provisions of Senate Joint Resolution 20 confirm the stipulations that have been entered into by California and the Federal Government under which off-shore oil operations have continued since the date of the Supreme Court decision. Also confirmed are the notices issued by the Secretary of the Interior under which producing wells in the Gulf of Mexico have continued production during the period since the Texas and Louisiana decrees. Another provision specifically protects rights, if any, in the submerged areas that may exist under any previous act of Congress.

A new section added by amendment gives the statutory consent of the Federal Government for State regulation and management of fish, shellfish, sponges, kelp, and other marine animal and plant life.

Thus Senate Joint Resolution 20 would make no change whatever in the existing basic law of the relationship of the coastal States and the Federal Government to the mineral resources of the submerged lands. This law, the Supreme Court of the United States has ruled unequivocally on three separate occasions, is that the coastal States do not and never did own the lands beneath the open ocean adjacent to their coasts, but rather that the Federal Government, under the Constitution, has had "paramount rights and interests" in the mineral resources of the area since the beginning of our Nation. (See the decrees and the opinions in *U. S. v. California*, 332 U. S. 19; *U. S. v. Louisiana*, 339 U. S. 699; and *U. S. v. Texas*, 339 U. S. 707.)

Therefore, the development of the mineral resources of these areas depends upon Federal action. Under present law, no other sovereignty has authority to control such development. At the same time, no Federal statute is applicable to their administration. The Department of the Interior, with the concurrence of the Department of Justice, has held that the Mineral Leasing Act of 1920, as amended, is not applicable to lands submerged by the open ocean, since such areas are not "public lands" within the meaning of the act, and it would be

impossible to fulfill the conditions set forth by Congress with respect to upland areas.

While there may be certain inherent and residual powers in the Executive to protect the interests of the United States in the absence of specific legislation, it is highly desirable from every point of view that Congress should fulfill its constitutional responsibility and legislate the standards and conditions under which the orderly development of the great natural resources of the areas shall take place. Article 4, section 3, clause 2 of the Constitution places such responsibility on Congress.

Senate Joint Resolution 20 is specifically designed to meet that responsibility with respect to the submerged lands. That it will do the job has been attested to by the executive agencies concerned with its administration and by the operating lessees themselves.

AREAS TO WHICH APPLICABLE

The measure is applicable only to lands of the Continental Shelf seaward of the line of mean low tide which are submerged by the open ocean. "Tidelands" as such, namely, lands covered by the ebb and flow of the tide, are and remain the property of the State within which they lie as they have been since the *Pollard case* (3 Howard 212) decided more than a hundred years ago. As stated, lands beneath navigable inland waters are not affected—such as navigable rivers and lakes, and beds of true bays, harbors, and inlets. Such lands remain State property.

The resolution makes no attempt to determine the boundary line between inland waters, which are under State control, and the open seas, where the Supreme Court has said the "paramount rights" and interests of the Federal Government begin. This very issue of where such a line should be drawn is now before the Supreme Court and a special master appointed by the Court is taking testimony and gathering evidence upon which to base a recommendation to the Court for fixing such boundaries in connection with the *California case* (332 U. S. 19). The action of the Supreme Court in this case will, of course, establish the principle upon which such boundary lines shall be drawn elsewhere.

REASONS FOR INTERIM APPROACH

The compelling reason for interim legislation is the Nation's immediate, pressing need for development of new sources of supply of petroleum within areas under national control. This measure will end the present stalemate in development of such sources in the submerged lands.

The extent and reasons for the national need for new sources of petroleum are discussed below. At this point, however, it is appropriate to point out that the effort of the coastal States to acquire the submerged lands of the Continental Shelf has been carried on fruitlessly for 14 years in successive Congresses and there is no reason to believe that it can be successful now.

In view of the international situation, it does not appear that further delay in the development of the submerged lands is in the national interest. Senate Joint Resolution 20 effects no change whatever in

existing law with respect to property rights or sovereignty over the mineral resources of the submerged lands. It neither gives new authority to the Federal Government nor does it take away either property or sovereignty from the coastal States that they now possess. In fact, section 4 of the resolution, giving a State virtual veto power, for a period of 5 years, over new leasing within the marginal sea adjacent to its shores is a distinct grant of new power to the coastal States, as is the sharing of the revenues a grant of Federal funds to the particular States affected.

Rather, Senate Joint Resolution 20 is an administrative measure to give congressional direction and guidance to the executive branch in the development of the natural resources for which the Federal Government has responsibility. As such, it would meet the emergency situation without tilting the scales in favor of either side in the basic controversy.

DEVELOPMENT AT STANDSTILL

At the time of the committee hearings on Senate Joint Resolution 20, State leases on submerged lands off the coast of California covered 10,600 acres on which were situated about 400 wells with an average production of 50,000 barrels of oil per day. In the Gulf, there were outstanding oil and gas leases covering approximately 1,550,000 acres of coastal submerged lands acquired from the States of Texas and Louisiana through competitive bidding. This constituted only about 50 percent of the area originally leased by these States and less than 2 percent of the 92,000,000 acres included in the Continental Shelf of the United States in the Gulf of Mexico. There had been drilled on these leases 235 wells resulting in 91 oil wells, 28 gas condensate wells, 4 gas wells, and 112 dry holes. The production from these leases amounted to about 20,000 barrels per day.

Since the Supreme Court decrees, all exploration and development work in the Gulf has ceased. Producing wells have continued production under a series of temporary authorizations issued by the Secretary of the Interior pursuant to the authority conferred on him by Executive Order 9633 (10 Federal Register 12305). However, the oil being produced is a mere trickle in comparison with the potential production from the area.

In the case of California, exploration and development have continued to a degree under the stipulations entered into by California and the Federal Government after the Supreme Court decision. But here also the lack of certainty as to what type of legislation Congress may pass respecting the administration of the undersea areas has hampered development.

In substance, the lessees, comprising thirty-odd oil-producing companies which have invested more than half a billion dollars in exploration, development; and production up to the filing of the suits, are in the legal position of tenants-at-will, conducting limited operations under temporary permits.

THE NATION'S NEED FOR OIL

At the conclusion of this report there is set forth a memorandum dated January 21, 1952, by Bruce K. Brown, Deputy Administrator, Petroleum Administration for Defense, to Secretary Chapman on

submerged-lands oil in relation to the national need. The attention of the Senate is invited to this report by the defense agency charged with responsibility for petroleum supplies in the present emergency.

In addition, the Chief Oil Economist of the Department of the Interior submitted the following statistics to the committee staff under date of January 29, 1952:

During the first 11 months of 1951 (the figures for the month of December are not yet available) the production of crude oil in the United States averaged 6,146,000 barrels per day. When the production of natural gasoline during the 11-month period is added, we have a total production of liquid hydrocarbons averaging 6,706,000 barrels per day. The total demand for petroleum in this country during the 11-month period averaged 7,406,000 barrels per day, and of this total figure, domestic consumption accounted for an average of 6,982,000 barrels per day.

Thus, if only the most favorable figures are considered, i. e., the relationship between the total production of liquid hydrocarbons and domestic consumption, it is apparent that the country experienced a deficit averaging 276,000 barrels per day during the 11-month period from January through November 1951.

UNDERSEA AREAS A POTENTIAL SOURCE

In his report to the Secretary of the Interior, set forth in full below, the Deputy Administrator of the Petroleum Administration for Defense, states:

Aside from the vast untested potentialities of submerged land oil, we have estimated that production from fields already discovered on the Continental Shelf could be expanded from the present level of something less than 20,000 barrels per day to more than 250,000 barrels per day. Even this volume would be a notable partial offset to the crude oil shortage which is expected to exist in an all-out war.

Representatives of the operating lessees have told the committee that if their leases are recognized and they are permitted to resume operations, production from fields already discovered in the Gulf can be more than doubled in from 6 to 8 months. They estimate that it may be possible to increase production in the Gulf by 200,000 to 300,000 barrels a day within 2 to 3 years.

The actual extent of the undersea reserves of gas and oil is of course a matter of conjecture, at this point. However, it is a scientific fact that many of the rich oil-producing geologic structures of the uplands extend out into the Continental Shelf, and successful oil-producing companies have been willing to invest more than a quarter of a billion dollars in operations in the Gulf alone.

Nearly all oil geologists agree that the reserves of the Continental Shelf are tremendous. At hearings held by the committee on S. 923, Eighty-first Congress, the then Secretary of the Interior testified:

Based on the quantity of petroleum that has been discovered in the coastal belt of Texas and Louisiana in an area comparable in size to the area of the adjoining Continental Shelf, the petroleum reserves of the Continental Shelf off the Texas and Louisiana coasts may be estimated as totaling approximately 13,000,000,000 barrels. A comparison of areas of the Continental Shelf along the coast of California adjacent to areas of land which are productive of petroleum leads to the inference that the potential reserves of the shelf area adjacent to California may aggregate about 2,000,000,000 barrels.

The extent of the present limited operations in the undersea areas can be ascertained from the following data received from the Department of the Interior.

Payments from operations in the Gulf of Mexico, including royalties, rentals, and bonuses, received by the Secretary of the Interior up to January 10, 1952, for the period from December 11, 1950 (the date of the Louisiana and Texas decrees), to December 31, 1951, total \$8,207,147.79.

The Federal Government has been holding such funds from operations off the coast of California only since October 1, 1950, when the stipulation under which operations had been carried on was changed. For the period October 1, 1950, to December 31, 1951, the Government has received and impounded \$10,528,526.71. Previously the State had impounded, from June 23, 1947 (the date of the decision), to September 30, 1950, some \$28,288,579.88.

Production figures are always somewhat delayed. The latest available are for the month of October 1951. During that month wells off the coast of Louisiana produced 538,112 barrels. There was no under-sea production off Texas. During last October, 1,378,698 barrels were taken from undersea deposits off the coast of California.

HISTORY OF LEGISLATION

As stated, the submerged lands issue has been before successive Congresses for some 14 years. Suit to assert claim to the submerged lands on behalf of the Federal Government was filed in 1945. The decision was handed down on June 23, 1947, holding that the coastal State did not own, and had never owned, the lands beneath the open ocean adjacent to its shores, but rather that the Federal Government had "paramount rights" and interests in such areas (332 U. S. 19). Similar decisions respecting the under-ocean lands adjacent to the Louisiana and Texas coasts were handed down on June 5, 1950 (339 U. S. 699, and 339 U. S. 707). For the convenience of the Senate, the text of the decision in the Texas case, as the most recent expression of the Court, is set forth in the appendix to this report.

Previously, the President by Proclamation No. 2667 on September 28, 1945, had asserted the jurisdiction of the United States over the natural resources of the subsoil and sea bed of the Continental Shelf. The text of this proclamation is set forth in the appendix.

Meanwhile, legislation respecting the submerged lands continued to be pressed in Congress.

In July of 1946, the Seventy-ninth Congress by a vote of 188 to 67 in the House of Representatives and of 44 to 34 in the Senate, passed House Joint Resolution 225 which quitclaimed to the coastal States any right, title, interest, or claim of the United States to lands beneath the marginal seas. Despite the near 3 to 1 margin by which the resolution passed the House, it was vetoed by the President and his veto was sustained in the House (92 Congressional Record 10745) and thus never came before the Senate.

On April 30, 1948, the House of Representatives of the Eightieth Congress also passed a quitclaim bill, H. R. 5992, by a vote of 259 to 29. Subsequently, the Senate and House committees of the Eightieth Congress held joint hearings on S. 1938, an identical bill to H. R. 5992, and reported it out during the closing days of the session but no action was taken by the Senate.

At the first session of the Eighty-first Congress numerous bills relating to submerged lands were introduced, including S. 923, spon-

sored by the Department of National Defense, Department of Justice, and the Department of the Interior. The bill authorized the Secretary of the Interior, upon certain conditions, to issue oil and gas leases in exchange for State leases covering submerged land and issued by the State or its political subdivision prior to the decision of the Supreme Court in the case of the *United States v. California* on June 23, 1947. Extensive hearings were held by the Senate Interior and Insular Affairs Committee during October of 1949, but no action was taken.

After the decision in the Texas and Louisiana cases, Senate Joint Resolution 195 was introduced on July 20, 1950, by the chairman, authorizing State lessees holding leases issued prior to December 21, 1948, the date of the filing of the suits against Louisiana and Texas, or holding leases issued subsequent thereto with the approval of the Secretary of the Interior to continue to operate in accordance with the terms and provisions of the lease. It was in a number of other respects also similar to the present measure. Hearings were held on Senate Joint Resolution 195 on August 14 to 19, 1950. No committee action followed.

Early in the first session of this Congress, on January 18, 1951, Senate Joint Resolution 20 was introduced by the chairman of this committee for himself and Mr. Anderson. At the request of new members of the committee, full scale hearings were held in February and March 1951 on Senate Joint Resolution 20 and S. 940, the quitclaim bill sponsored by Senator Holland and other Senators.

On May 1, 1951, a motion to substitute the quitclaim bill for the interim measure was rejected by the committee.

In all, 13 public hearings have been held by various committees of Congress on submerged lands legislation, and more than 6,000 pages of testimony and exhibits have been submitted.

WIDESPREAD SUPPORT FOR INTERIM LEGISLATION

Support for interim legislation that would "produce the oil and postpone the controversy" has come from spokesmen for the coastal States, from industry, and from the administrative agencies of the Federal Government.

The present lessees, through Walter H. Hallanan, president of the Plymouth Oil Co., who testified as chairman of the Offshore Lessees Committee consisting of representatives of practically all the holders of leases on submerged lands off the coasts of Texas, Louisiana, and California, stated:

The offshore lessees believe that the provisions relating to operations on the submerged lands contained in Senate Joint Resolution 20 will enable them to move forward and resume their earnest endeavors to discover and develop vitally needed petroleum reserves. The resumption of these operations will provide additional insurance for this Nation's security which we just cannot deny to the people of this country. We favor the interim legislation as that seems to us to be the only way out" (hearings, S. J. Res. 20, 82d Cong., pp. 78-79).

William W. Clary, speaking for the oil and gas operators in the submerged area off the coast of California stated:

But operators favor this bill primarily for the principal reason that we believed when it was introduced last summer and again this year, that it would bring about production of oil and enable the oil producers to meet the demands of the Military Establishment of the United States, which now looms up a million barrels a day, more quickly than any other possible solution (ibid., p. 324).

The State of Texas speaking through its Governor, Hon. Allan Shivers, its attorney general, Hon. Price Daniel, and the Commissioner of the General Land Office, Hon. Bascom Giles, stated in an official written statement to the committee respecting Senate Joint Resolution 20, dated February 19, 1951:

We favor the general purpose of interim legislation as expressed in Senate Joint Resolution 20. We recognize that continued production and additional exploration for oil, gas, and other minerals are essential to the welfare of our people in this time of emergency. Pending permanent legislation on the subject, we will support any reasonable interim bill which would permit exploration, development, and production of essential natural resources to be continued on this property, provided the interim legislation does not contain anything which would prejudice our State in its effort to obtain permanent legislation restoring the ownership which it claimed and enjoyed prior to June 5, 1950 (hearings, pp. 99-100).

Hon. Hall Hammond, attorney general of the State of Maryland and chairman of the submerged lands committee of the National Association of Attorneys General in testifying before the committee stated:

That though the State of Maryland and the national association are committed to a program which will confirm and establish the title of the States to lands beneath navigable waters within their boundaries " * * * if the Walter bill or a bill similar to the Walter bill (id est, H. R. 4484, 82d Cong.) cannot be passed, interim legislation which confirms leases, and to this extent makes for certainty and practicability of operation and the continued production and additional exploration for oil, gas, and other minerals would be desirable, and in the interest of the people in this period of emergency, if it does not tilt the scales either in favor of the United States or the States, and so unduly favors one or the other in the passage of permanent legislation (hearings, p. 94).

James G. Patton, the president of the National Farmers Union, which, since the inception of the controversy has advocated ownership of the submerged lands by the Federal Government, stated "that the objectives of this legislation are in accordance with the views of my organization" (ibid., p. 206).

The National Grange stated to the committee:

We agree with the purposes of Senate Joint Resolution 20 which provides for temporary arrangement to continue operations of all leases under the terms which have been granted to lessees by the States or subdivisions of the States (ibid., p. 301).

Quotations from the testimony or official communications of certain State officials, above, are not to be construed as an attempt to imply that those officials necessarily endorse Senate Joint Resolution 20, as such. They are set forth to show the widespread support of interim legislation to permit resumption of operations.

EQUITIES OF LESSEES

From the 1920's up to December 1948, when the action against Louisiana and Texas was initiated in the Supreme Court, the States issued leases to private oil companies for development of the mineral resources of the submerged lands. Some 30 or more oil companies had acquired such leases from the States on the basis of competitive bidding. They have invested hundreds of millions of dollars in special and very expensive equipment, and in training specialized personnel for the extremely difficult work of undersea operations. This equipment and personnel now are largely idle.

That these holders of good-faith leases have equities which should be protected has long been recognized by the Federal Government.

The former Secretary of the Interior, the late Harold L. Ickes, in testifying on February 5, 1946, before the Senate Committee on the Judiciary stated:

* * * Leases and contracts for operations on submerged lands outstanding when the present suit [*United States v. California*] was filed in the Supreme Court should be continued in force and effect by the Federal Government, at least as to royalty rate and time limit.

The former Attorney General, Tom C. Clark, in his oral argument on March 13, 1947, before the Supreme Court in the California case stated:

The President has authorized me to say that the administration approaches this controversy with every desire to do substantial equity * * * to the private interests involved. * * * The President advised me he will recommend to the Congress that legislation be enacted * * *. Such legislation in the view of the President, should * * * establish equitable standards for the recognition of investments made by private interests and should offer a basis for the continued operations of private establishments wherever consistent with the national interest, and on terms which would be fair and just under all circumstances. There is no desire on the part of the President or any official of the executive branch to destroy or confiscate any honest and bona fide investment * * *.

The Honorable Oscar L. Chapman in his letter of January 29, 1951, to the chairman of the committee reiterated this attitude on the part of the executive department and stated that the Department of the Interior would have no objection should the Congress decide—as proposed in Senate Joint Resolution 20, that equitable considerations warrant the granting of such recognition not only as to State leases issued prior to June 23, 1947, but also as to State leases issued between June 23, 1947, and December 21, 1948 * * *.

The Solicitor General of the United States, Mr. Perlman, stated that the failure of the United States to obtain an accounting from the State for the period prior to June 5, 1950, removed the objection of the Department of Justice to a cut-off date more recent than the data of the California decision and that the Justice Department does not oppose recognition of existing State leases issued up to December 21, 1948, the date of the initiation of the action against Louisiana and Texas.

The committee wishes to point out that Senate Joint Resolution 20 adequately protects these equities in the opinion of the lessees themselves and that it fulfills the commitment of the Federal Government in that respect.

APPLICANTS' RIGHTS

The controversy over whether the States, or the Federal Government, should administer and control the development of the mineral resources of the areas submerged by the open ocean is further complicated by sharp differences of opinion between the administrative agencies of the Government, on the one hand, and a group of persons who applied for leases on the submerged areas under the provisions of the Mineral Leasing Act of 1920, as amended. Many of these applications were made in the early and middle 1930's, before the Federal Government had formally asserted its claims and while the States were leasing the areas. Some applicants contend that it was

as a result of their activity that the Federal Government first began pressing its assertion of sovereignty in the under-ocean areas.

Successive Secretaries of the Interior denied applications filed under the Mineral Leasing Act, and in 1947 the Solicitor of the Department of the Interior submitted a formal legal opinion, in which the Attorney General of the United States concurred, holding that the act was not applicable to the submerged lands. The applicants have contested this administrative decision, and have sought judicial review. Action for such review is now pending before the United States District Court for the District of Columbia (*Mayhew v. Chapman*, Case No. 411-48 civil, and similar cases).

Still other persons have filed for patents of the submerged lands on the basis of "scrip certificates." These applications likewise have been denied by the Secretary of the Interior.

Any rights that may have been acquired in the submerged lands under any previous act of Congress are saved by section 8, which specifically holds such rights, if any, in the status quo pending disposition of the matter by the courts.

REPORTS OF EXECUTIVE AGENCIES

There is set forth below the most recent reports of the executive agencies that are concerned with the administration of the oil and gas reserves under the control of the Federal Government.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., January 29, 1951.

HON. JOSEPH C. O'MAHONEY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate.

MY DEAR SENATOR O'MAHONEY: This responds to your request of January 19, 1951, for a report on Senate Joint Resolution 20, a resolution to provide for the continuation of operations under certain mineral leases issued by the respective States covering submerged lands of the Continental Shelf, to encourage the continued development of such leases, to provide for the protection of the interests of the United States in the oil and gas deposits of said lands, and for other purposes.

This Department recommends the enactment of Senate Joint Resolution 20.

The controversies between the United States, on the one hand, and the coastal States of California, Louisiana, and Texas, on the other hand, over the submerged lands of the Continental Shelf situated below the ordinary low-water mark and outside the inland waters along the coasts of these respective States were resolved by decisions favorable to the United States rendered by the Supreme Court in the cases of *United States v. California* (332 U. S. 19 (1947)), *United States v. Louisiana* (339 U. S. 699 (1950)), and *United States v. Texas* (339 U. S. 707 (1950)).

Pending the enactment of legislation on the subject by the Congress, the Secretary of the Interior is presently administering the submerged lands of the Continental Shelf by virtue of Executive Order 9633 (10 F. R. 12305).

Oil and gas operations are being conducted off the coasts of California, Louisiana, and Texas at the present time, with the authorization of the United States. The aggregate production from these coastal lands amounts to approximately 1,950,000 barrels of oil per month.

In the case of California, a proceeding is pending in the Supreme Court to determine just where the seaward line of the inland waters and tidelands of the State should be drawn with respect to certain coastal areas, which include all the areas in which there are known oil and gas operations. Pending the Court's determination in this proceeding, oil and gas operations are being conducted in the

coastal areas of California pursuant to a so-called operating stipulation to which the United States and California are parties. The current stipulation is dated August 21, 1950, and covers the period ending October 1, 1951. The income from these operations is being held in segregated accounts for the benefit of whichever party may be entitled to the money in accordance with the line of demarcation ultimately fixed by the Court. A copy of the original stipulation and a copy of the current stipulation are enclosed.

With respect to the submerged coastal areas in the Gulf of Mexico adjacent to Louisiana and Texas, some oil and gas operations are being conducted pursuant to part II of a notice issued by the Secretary of the Interior on December 11, 1950 (15 F. R. 8835). Under part II of the notice, persons who on December 11, 1950, were conducting oil and gas operations in areas of submerged coastal lands of the United States adjacent to the Texas and Louisiana coasts are authorized temporarily to continue such operations, subject to the payment to the United States of the equivalent of such rentals, royalties, and other payments as were provided to be paid the lessor in such State leases for and during the temporary period. This temporary authorization was granted in the exercise of an implied authority to provide for the protection of the oil and gas deposits and the elaborate installations against loss, damage, and deterioration. A copy of the notice of December 11, 1950, is enclosed.

The maximum oil and gas development of the submerged coastal areas, consistent with good conservation practices, is vital to our national defense. At the beginning of World War II, our domestic production was about 3,840,000 barrels of oil a day, with a reserve producing capacity of 750,000 barrels a day, or 20 percent. Our production reached a peak of 4,890,000 barrels a day in July 1945, an increase over 1941 of 27 percent, which consumed the 20 percent initial reserve capacity plus 7 percent added during the 4-year interval. At present, our production is 5,900,000 barrels a day, with a reserve capacity of only 700,000 barrels a day, or 12 percent. If a new war demand should call for an increase proportional to that required during the 1941-45 period, or an increase amounting to 1,600,000 barrels a day, and if we could not increase our production more than the present 12 percent reserve plus 7 percent new capacity in 4 years, our shortage would be 500,000 barrels a day.

The reserves of the 14 new offshore fields discovered in the Gulf since 1947 are estimated at an average of 20 million barrels each, or a total of 280 million barrels. Full development of these proven fields would increase productive capacity by 32,000 barrels a day to a total of 52,000 barrels a day. If exploration is encouraged, there is every reason to believe that new offshore fields in the Gulf, equal in reserves and productive capacity to those found since 1947, will be found in the next 4 or 5 years. The result would be an increase in reserves of 280 million barrels and in producing capacity of 20,000 barrels a day. Such increases, when added to those which would result from full development of the proven fields in the Gulf, would amount to a total of 560 million barrels of additional reserves and 52,000 barrels a day of additional producing capacity.

Guidance from the Congress is needed for the program of expanded development referred to above. It is the view of this Department that Senate Joint Resolution 20, if enacted by the Congress, would provide adequate authority and guidance for the administration and development of the oil and gas deposits in the submerged lands of the Continental Shelf, pending the enactment of permanent legislation on this subject.

There is only one section of the resolution which appears to require specific comment by this Department. This is section 1, under which persons holding leases issued by coastal States on submerged lands of the Continental Shelf prior to December 21, 1948 (which was the date on which the suits were filed against Louisiana and Texas), would be permitted, if such leases meet the conditions prescribed in subsection (a) of that section, to continue to maintain these leases and to conduct operations under them, except that the Secretary of the Interior would, in effect, be substituted for the respective States as lessor.

In connection with section 1, it perhaps should be stated that the executive branch of the Government has consistently taken the position that the United States ought to recognize the equities of persons who obtained oil and gas leases on submerged lands of the Continental Shelf from coastal States at a time when such persons had reason to believe that the issuing States could validly grant the right to take oil and gas from submerged lands of the Continental Shelf. For example, Secretary of the Interior Harold L. Ickes stated on February 5, 1946, while testifying before the Senate Committee on the Judiciary with respect to

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Senate Joint Resolution 48 and House Joint Resolution 225, Seventy-ninth Congress, that:

"* * * Leases and contracts for operations on submerged lands outstanding when the present suit [against California] was filed in the Supreme Court should be continued in force and effect by the Federal Government, at least as to royalty rate and time limit."

Also, Attorney General Tom C. Clark, in his oral argument before the Supreme Court in the case of *United States v. California* on March 13, 1947, stated that:

"The President has authorized me to say that the administration approaches this controversy with every desire to do substantial equity * * * to the private interests involved. * * * The President advised me he will recommend to the Congress that legislation be enacted * * *. Such legislation, in the view of the President, should * * * establish equitable standards for the recognition of investments made by private interests and should offer a basis for the continued operation of private establishments wherever consistent with the national interest, and on terms which would be fair and just under all circumstances. There is no desire on the part of the President or of any official of the executive branch to destroy or confiscate any honest and bona fide investment * * *."

In making recommendations to the Eightieth and Eighty-first Congresses on the subject of the recognition of the equities of persons holding State oil and gas leases on submerged lands of the Continental Shelf, the executive branch of the Government suggested that such recognition should be extended with respect to leases issued prior to June 23, 1947, which was the date on which the Supreme Court rendered its decision in the case of *United States v. California*.

The question of the extent to which the United States, as a matter of grace, should grant Federal recognition with respect to oil and gas leases issued by coastal States on submerged lands of the Continental Shelf is, of course, a matter for determination by the Congress. If the Congress should decide, as proposed in Senate Joint Resolution 20, that equitable considerations warrant the granting of such recognition not only as to State leases issued prior to June 23, 1947, but also as to State leases issued between June 23, 1947, and December 21, 1948, this Department would have no objection.

Insofar as California is concerned, that State has not issued any leases on submerged lands of the Continental Shelf since June 23, 1947, without the concurrence of the Secretary of the Interior.

Due to the imminent consideration of Senate Joint Resolution 20 by your committee, there has not been sufficient time to obtain the advice of the Bureau of the Budget with respect to the relationship of this proposed legislation to the program of the President.

Sincerely yours,

OSCAR L. CHAPMAN,
Secretary of the Interior.

(COMMITTEE NOTE.—Because of the length of the enclosures submitted by the Secretary of the Interior, it was not deemed desirable to reprint them in this report. However, the attention of the Members of the Senate is directed to the hearings on the present measure, S. J. Res. 20, held by the Interior and Insular Affairs Committee in February and March of 1951. The text of the notices and stipulations is set forth in full, beginning on p. 10.)

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, January 29, 1951.

HON. JOSEPH C. O'MARONEY,
*Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request of January 19, 1951, for the views of this Department relative to the joint resolution (S. J. Res. 20) to provide for the continuation of operations under certain mineral leases issued by the respective States covering submerged lands of the Continental Shelf, to encourage the continued development of such leases, to provide for the protection of the interests of the United States in the oil and gas deposits of said lands, and for other purposes.

The proposed legislation would authorize a continuation, under certain conditions, of oil and gas operations and development in the offshore submerged lands involved in the cases of *United States v. California* (332 U. S. 19), *United States v. Louisiana* (339 U. S. 699), and *United States v. Texas* (339 U. S. 707). The conditions prescribed for such continuation would include, among other things, a requirement that the operations be conducted under a State lease covering such lands issued prior to December 21, 1948, and in force and effect on June 5, 1950 (the date of the decisions of the Supreme Court in the *Louisiana* and *Texas* cases), or under a lease issued with the approval of the Secretary of the Interior and in force and effect on the effective date of the proposed legislation. It would also be required that all rents, royalties, and other sums payable under the lease subsequent to June 5, 1950, which have not been paid in accordance with the provisions thereof, shall be paid to the Secretary of the Interior, who shall deposit such moneys in a special fund in the Treasury. June 5, 1950, is the date prior to which an accounting was denied to the United States in decrees entered by the Supreme Court in the *Louisiana* and *Texas* cases (340 U. S. 899; 340 U. S. 900). All leases brought within the terms of the measure would be subject to a minimum royalty of 12½ percent of the value of the production conducted thereunder.

The Secretary of the Interior would be authorized to exercise such powers of supervision and control as may be vested in the lessor by the terms of the State leases and to impose such other requirements as he may deem to be reasonable and necessary to protect the interests of the United States. Where a State lease covers lands underlying inland navigable waters, the Secretary would be authorized, with the approval of the Attorney General, to certify that the United States claims no proprietary interest in such lands, provided the submerged lands in question are not subject to certain specific proprietary claims of the United States. In the event of a controversy between the United States and a State as to whether or not certain submerged lands are situated beneath navigable inland waters, the Secretary would be authorized, with concurrence of the Attorney General, to negotiate and enter into an agreement respecting the continuation of operations in such lands, and the impounding of revenues therefrom, pending the settlement or adjudication of the controversy.

In order to meet the existing urgent need for further exploration and development of mineral deposits in submerged lands of the Continental Shelf, the Secretary of the Interior would be authorized, pending the enactment of further legislation on the subject, to issue, on a basis of competitive bidding, oil and gas leases of such lands not covered by State leases, and the President would be empowered to withdraw from disposition any unleased lands and reserve them for the use of the United States in the interest of national security. All revenues derived from operations conducted under the proposed legislation, whether from continued State leases or from new leases, would be subject to the following disposition: 37½ percent of the moneys received from operations within the seaward boundary of a State would be paid to such State; all other moneys so received would be held in a special account in the Treasury pending the enactment of legislation concerning the disposition thereof.

As the above summary of its provisions reveals, the proposed legislation is in the nature of an interim measure to provide authority for continued oil and gas operations and development in offshore submerged lands pending the enactment of permanent legislation dealing with the subject. The Department of Justice has, of course, along with the Department of the Interior and the Department of Defense, heretofore repeatedly urged the enactment of permanent legislation providing for such development under the authority and control of the Federal Government. This Department adheres to that position. However, in view of the needs presented by the current national emergency, we have concluded that Senate Joint Resolution 20, as introduced, appears to be adequate for the protection of the interests of the United States until such time as the Congress is able to consider legislation of a permanent character. We, therefore, urge the early consideration and passage of the resolution.

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

14 CONTINUE OPERATIONS UNDER CERTAIN MINERAL LEASES

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., March 8, 1951.

Hon. JOSEPH C. O'MAHONEY,
*Chairman, Senate Committee on Interior and Insular Affairs,
Senate Office Building, Washington, D. C.*

MY DEAR SENATOR O'MAHONEY: This is in answer to your letter of January 19, 1951, inviting the Bureau of the Budget to comment on Senate Joint Resolution 20, to provide for the continuation of operations under certain mineral leases issued by the respective States covering submerged lands of the Continental Shelf, to encourage the continued development of such leases, to provide for the protection of the interests of the United States in the oil and gas deposits of said lands, and for other purposes.

This bill appears to provide adequate authority, on a temporary basis pending the enactment of permanent legislation on this subject, for the continuation of oil and gas operations and development in off-shore submerged lands. This authority is important to our national defense effort in encouraging exploration and development of mineral deposits in submerged lands to meet the existing urgent needs for these resources.

It is noted that with respect to revenue derived from operations conducted under its authority, whether from continued State leases or from new leases, the bill provides that 37½ percent of the moneys received from operations within the seaward boundaries of a State would be paid to that State; all other moneys from operations in the submerged lands would be held in a special account in the Treasury pending the enactment of permanent legislation dealing with the disposition of these receipts. This provision, similar to the Mineral Leasing Act which accords to a State 37½ percent of the royalties obtained from leases of Government lands within its boundaries, would constitute congressional recognition of any equitable interests which may exist in the State off whose shores operations under this legislation are conducted.

In the case of existing leases, the bill would substitute the Federal Government for the States after December 21, 1948 (the date on which suit was filed by the United States against Louisiana and Texas). However, the Supreme Court decision in the California case on June 23, 1947, gave notice that the interests of the Federal Government might be involved in continued operations by the States in the submerged lands after the date of that decision. Accordingly, it is suggested that the desirability of prescribing June 23, 1947, as the cut-off date in the bill rather than December 21, 1948, be considered in evaluating the respective equities of the States and the United States Government in this matter.

Subject to the consideration by the Congress of the above general issue, the Bureau of the Budget perceives no objection to the enactment of this measure.

Sincerely yours,

F. J. LAWTON, *Director.*

DEPARTMENT OF THE INTERIOR,
PETROLEUM ADMINISTRATION FOR DEFENSE,
Washington, D. C., January 21, 1952.

Memorandum.

To: Secretary Oscar L. Chapman.

From: Bruce K. Brown, Deputy Administrator, Petroleum Administration for Defense.

Subject: Submerged lands oil.

Since mid-1950 at least, United States demand for petroleum products has been increasing more rapidly than United States capacity to produce crude petroleum has risen. The reserve capacity to produce crude oil which was estimated at 1 million barrels per day over actual production at the beginning of 1950 has been reduced to about 700,000 barrels per day. Actual production has risen markedly since that time, but demand has increased more rapidly. Domestic supplies have been augmented by imports, largely though not exclusively from the Caribbean area.

Spurred on by the obvious needs of defense mobilization and encouraged by policies established by the Petroleum Administration for Defense which give special support in priorities for the purchase of oil country tubular goods to permit the completion of exploratory or "wild cat" wells, in 1951 the United States oil industry drilled more exploratory wells than in any year in its history. An unusual number of new fields were discovered.

It is estimated that for the next few calendar quarters and assuming that materials are available to drill 44,000 new wells per year in search of oil and gas and, of course, assuming no adverse change in the "economic climate" surrounding the oil well drilling business, the United States petroleum industry can sustain present rates of production and, in addition, actually increase national productive ability by about one quarter of a million barrels per day per year. This potential achievement, important as it may be, gives small comfort when it is recognized that the United States demand for petroleum increases at still more rapid rates. There is a real need to step up our domestic drilling program by making more oil country tubular goods available to the industry.

Obviously, we cannot presently regard the volume of the Nation's crude oil reserves with any complacency. Oil is probably being found at rates at least equal to its withdrawal—and this is no mean achievement in view of today's high production rates. Proven and developed reserves, however, are not increasing fast enough to provide the Nation with a cushion in the event of a major war. Under these conditions, no proven or semiproven oil province can be overlooked or allowed to lie undeveloped. Yet, just such an oil province is in the submerged areas off the coasts of California, and Texas, Louisiana, and other Gulf Coast States. The Petroleum Administration for Defense has made several studies of the world-wide supply and demand for oil. These studies indicate a serious shortage of crude petroleum in the event of a major war.

It would be inappropriate to specify the degree of the estimated shortage in this letter and equally inappropriate to spell out the detailed assumptions as to supply from various areas and anticipated demands, military and civilian. It must suffice to say that in the computations we have made allowance for considerable increases in production in friendly foreign nations and have assumed that production within the United States would occur at maximum efficient rates.

In the event of an all-out war, the resultant crude oil shortage could be overcome only by accelerated drilling. In considering the time and effort which would have to be expended to discover and develop new crude production, the profound value of the submerged lands becomes apparent. It is no secret that the search for crude oil on the continental United States has become more difficult and more expensive. Geologists and geophysicists face the constant challenge of devising new methods and tools for the exploration of oil. To state it simply, the relatively obvious oil fields have already been discovered on the continental United States. The prospects for oil exploration in the coastal submerged lands are quite different. American geologists are convinced that this area is structurally favorable for the accumulation of oil (and their judgment is confirmed by the oil fields already discovered on the Continental Shelf), but the quantity of submerged lands oil remains a secret until tested by the drill. The distinguishing value of the Continental Shelf area is the fact that geologists already know of the existence of many potentially promising locations for drilling. These locations exhibit characteristics which have proved productive in already developed fields along the terrestrial portion of the coast. The magnitude of crude oil reserves that might eventually be discovered in the submerged lands is of course highly speculative. Some geologists of high standing in the industry have estimated, however, that reserves may amount to 10 billion barrels, one-third as much as the proven reserves on the uplands of continental United States.

Aside from the vast untested potentialities of submerged lands oil, we have estimated that production from fields already discovered on the Continental Shelf could be expanded from the present level of something less than 20,000 barrels per day to more than 250,000 barrels per day. Even this volume would be a notable partial offset to the crude-oil shortage which is expected to exist in an all-out war.

Every business has its ups and downs, and oil is no exception. The attitude of the general public and, indeed, of large segments of the industry itself, toward the assumed adequacy of oil supply is usually a reflection of the immediate past and present experiences. For example, in the winter of 1947-48 a mere shadow of threatened shortage of oil supply in some areas of the United States—a shortage which if really existent at all could not have exceeded one-half of 1 percent of demand—was sufficient to excite whole States, State and city governments, and citizens generally.

On the other hand and on frequent occasions, relatively minor quantities of surplus crude petroleum and refined products available above ground and in the markets create an impression of oversupply, which results in significant though transitory changes in the regulations imposed by State regulatory bodies. If surplus production, however small, occurs for more than a short period of time,

compensating adjustments must be made in the rate of refinery operations and the relative yields of individual products.

The extreme delicacy of the supply-demand balance that always exists is probably accounted for mainly by the nature of petroleum. It is an inflammable fluid used in tremendous quantities—over a million tons a day—as a major source of power, heat, and transportation. It is difficult and expensive to store and hard to move about.

I have identified some of the short-term factors affecting petroleum supply and affecting public attitude toward petroleum supply in some detail mainly to lay a basis for expressing the opinion that the immediate petroleum-supply situation—whatever it may be at any point of time—is too transitory a factor to be weighed heavily when long-range policy is under consideration.

The immediate situation changes from month to month—up and down. The long-range situation as exemplified by curves relating productive capacity to demand continues generally insecure. United States reserve capacity to produce crude oil for peace or war is not rising as fast as demand. Under such circumstances it seems obvious that all efforts should be bent toward freeing for testing and development the largest known, undeveloped oil province in the Western Hemisphere—that is, the submerged areas off our coasts.

Bruce K. Brown,
Deputy Administrator.

APPENDIX A

(COMMITTEE NOTE.—Set forth below is the text of the opinion and decree of the Supreme Court of the United States in the *Texas case* (339 U. S. 707), together with the dissenting opinions. This case is reprinted both because it is the most recent expression of the Supreme Court on the issue, and because it deals with Texas' claim to a sea boundary of 10½ miles.)

SUBMERGED LANDS

UNITED STATES v. TEXAS

(339 U. S. 707)

NO. 13, ORIGINAL

Argued March 28, 1950.—Decided June 5, 1950

1. In this suit, brought in this Court by the United States against the State of Texas under Art. III, § 2, Cl. 2 of the Constitution, *held*: The United States is entitled to a decree adjudging and declaring the paramount rights of the United States as against Texas in the area claimed by Texas which lies under the Gulf of Mexico beyond the low-water mark on the coast of Texas and outside the inland waters, enjoining Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring Texas to account to the United States for all money derived by it from the area after June 23, 1947. Pp. 709-720.
2. Even if Texas had both *dominium* and *imperium* in and over this marginal belt when she existed as an independent Republic, any claim that she may have had to the marginal sea was relinquished to the United States when Texas ceased to be an independent Nation and was admitted to the Union "on an equal footing with the existing States" pursuant to the Joint Resolution of March 1, 1845, 5 Stat. 797. Pp. 715-720.
 - (a) The "equal footing" clause was designed not to wipe out economic diversities among the several States but to create parity as respects political standing and sovereignty. P. 716.
 - (b) The "equal footing" clause negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. P. 717.
 - (c) Although *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty. P. 719.
 - (d) If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national

interests and national responsibilities, thereby giving rise to paramount national rights in it. *United States v. California*, 332 U. S. 19. P. 719.

(e) The "equal footing" clause prevents extension of the sovereignty of a State into the domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty which would produce inequality among the States. Pp. 719-720.

3. That Texas in 1941 sought to extend its boundary to a line in the Gulf of Mexico 24 marine miles beyond the three-mile limit and asserted ownership of the bed within that area and in 1947 sought to extend the boundary to the outer edge of the continental shelf do not require a different result. *United States v. Louisiana*, ante, p. 699. P. 720.
4. The motions of Texas for an order to take depositions and for the appointment of a special master are denied, because there is no need to take evidence in this case. Pp. 715, 720.
5. In ruling on a motion by the United States for leave to file the complaint in this case, 337 U. S. 902, and on a motion by Texas to dismiss the complaint for want of original jurisdiction, 338 U. S. 806, this Court, in effect, held that it had original jurisdiction under Art. III, § 2, Cl. 2 of the Constitution, even though Texas had not consented to be sued. Pp. 709-710.

The case and the earlier proceedings herein are stated in the opinion at pp. 709-712. The conclusion that the United States is entitled to the relief prayed for is reported at p. 720.

Solicitor General Perlman argued the cause for the United States. With him on the brief were *Attorney General McGrath*, *Assistant Attorney General Vanech*, *Arnold Raum*, *Oscar H. Davis*, *Robert E. Mulroney*, *Robert M. Vaughan*, *Frederick W. Smith*, and *George S. Swarth*.

Price Daniel, Attorney General of Texas, and *J. Chrys Dougherty*, Assistant Attorney General, argued the cause for the defendant. With them on the brief were *Jesse P. Lulon, Jr.*, *K. Bert Watson*, *Dow Heard*, *Walton S. Roberts*, *Claude C. McMillan*, *Fidencio M. Guerra*, and *Mary K. Wall*, Assistant Attorneys General, and *Roscoe Pound* and *Joseph Walter Bingham*.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This suit, like its companion, *United States v. Louisiana*, ante, p. 699, decided this day, invokes our original jurisdiction under Art. III, § 2, Cl. 2 of the Constitution and puts into issue the conflicting claims of the parties to oil and other products under the bed of the ocean below low-water mark off the shores of Texas.

The complaint alleges that the United States was and is—

"the owner in fee simple of, or possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Texas and outside of the inland waters, extending seaward to the outer edge of the continental shelf and bounded on the east and southwest, respectively, by the eastern boundary of the State of Texas and the boundary between the United States and Mexico."

The complaint is in other material respects identical with that filed against Louisiana. The prayer is for a decree adjudging and declaring the rights of the United States as against Texas in the above-described area, enjoining Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring Texas to account to the United States for all money derived by it from the area subsequent to June 23, 1947.

Texas opposed the motion for leave to file the complaint on the grounds that the Attorney General was not authorized to bring the suit and that the suit, if brought, should be instituted in a District Court. And Texas, like Louisiana, moved to dismiss on the ground that since Texas had not consented to be sued, the Court had no original jurisdiction of the suit. After argument, we granted the motion for leave to file the complaint. 337 U. S. 902. Texas then moved to dismiss the complaint on the ground that the suit did not come within the original jurisdiction of the Court. She also moved for a more definite statement or for a bill of particulars and for an extension of time to answer. The United States then moved for judgment. These various motions were denied and Texas was granted thirty days to file an answer. 338 U. S. 806.

Texas in her answer, as later amended, renews her objection that this case is not one of which the Court has original jurisdiction; denies that the United States

is or ever has been the owner of the lands, minerals, etc., underlying the Gulf of Mexico within the disputed area; denies that the United States is or ever has been possessed of paramount rights in or full dominion over the lands, minerals, etc., underlying the Gulf of Mexico within said area except the paramount power to control, improve, and regulate navigation which under the Commerce Clause the United States has over lands beneath all navigable waters and except the same dominion and paramount power which the United States has over uplands within the United States, whether privately or state owned; denies that these or any other paramount powers or rights of the United States include ownership or the right to take or develop or authorize the taking or developing of oil or other minerals in the area in dispute without compensation to Texas; denies that any paramount powers or rights of the United States include the right to control or to prevent the taking or developing of these minerals by Texas or her lessees except when necessary in the exercise of the paramount federal powers, as recognized by Texas, and when duly authorized by appropriate action of the Congress; admits that she claims rights, title, and interests in said lands, minerals, etc., and says that her rights include ownership and the right to take, use, lease, and develop these properties; admits that she has leased some of the lands in the area and received royalties from the lessees but denies that the United States is entitled to any of them; and denies that she has no title to or interest in any of the lands in the disputed area.

As an affirmative defense, Texas asserts that as an independent nation the Republic of Texas had open, adverse, and exclusive possession and exercised jurisdiction and control over the land, minerals, etc., underlying that part of the Gulf of Mexico within her boundaries established at three marine leagues from shore by her first Congress and acquiesced in by the United States and other major nations; that when Texas was annexed to the United States the claim and rights of Texas to this land, minerals, etc., were recognized and preserved in Texas; that Texas continued as a State to hold open, adverse, and exclusive possession, jurisdiction, and control of these lands, minerals, etc., without dispute, challenge, or objection by the United States; that the United States has recognized and acquiesced in this claim and these rights; that Texas under the doctrine of prescription has established such title, ownership, and sovereign rights in the area as preclude the granting of the relief prayed.

As a second affirmative defense, Texas alleges that there was an agreement between the United States and the Republic of Texas that upon annexation Texas would not cede to the United States but would retain all of the lands, minerals, etc., underlying that part of the Gulf of Mexico within the original boundaries of the Republic.

As a third affirmative defense, Texas asserts that the United States acknowledged and confirmed the three-league boundary of Texas in the Gulf of Mexico as declared, established, and maintained by the Republic of Texas and as retained by Texas under the annexation agreement.

Texas then moved for an order to take depositions of specified aged persons respecting the existence and extent of knowledge and use of subsoil minerals within the disputed area prior to and since the annexation of Texas, and the uses to which Texas has devoted parts of the area as bearing on her alleged prescriptive rights. Texas also moved for the appointment of a special master to take evidence and report to the Court.

The United States opposed these motions and in turn moved for judgment asserting that the defenses tendered by Texas were insufficient in law and that no issue of fact had been raised which could not be resolved by judicial notice. We set the case down for argument on that motion.

We are told that the considerations which give the Federal Government paramount rights in, and full dominion and power over, the marginal sea off the shores of California and Louisiana (see *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, *supra*) should be equally controlling when we come to the marginal sea off the shores of Texas. It is argued that the national interests, national responsibilities, and national concerns which are the basis of the paramount rights of the National Government in one case would seem to be equally applicable in the other.

But there is a difference in this case which, Texas says, requires a different result. That difference is largely in the preadmission history of Texas.

The sum of the argument is that prior to annexation Texas had both *dominium* (ownership or proprietary rights) and *imperium* (governmental powers of regulation and control) as respects the lands, minerals, and other products underlying the marginal sea. In the case of California we found that she, like the

original thirteen colonies, never had *dominium* over that area. The first claim to the marginal sea was asserted by the National Government. We held that protection and control of it were, indeed, a function of national external sovereignty, 332 U. S. 31-34. The status of Texas, it is said, is different: Texas, when she came into the Union, retained the *dominium* over the marginal sea which she had previously acquired and transferred to the National Government only her powers of sovereignty—her *imperium*—over the marginal sea.

This argument leads into several chapters of Texas history.

The Republic of Texas was proclaimed by a convention on March 2, 1836.¹ The United States² and other nations³ formally recognized it. The Congress of Texas on December 19, 1836, passed an act defining the boundaries of the Republic.⁴ The southern boundary was described as follows: "beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande."⁵ Texas was admitted to the Union in 1845 "on an equal footing with the original States in all respects whatever."⁶ Texas claims that during the period from 1836 to 1845 she had brought this marginal belt into her territory and subjected it to her domestic law which recognized ownership in minerals under coastal waters. This the United States contests. Texas also claims that under international law, as it had evolved by the 1840's the Republic of Texas as a sovereign nation became the owner of the bed and sub-soil of the marginal sea *vis-à-vis* other nations. Texas claims that the Republic of Texas acquired during that period the same interest in its marginal sea as the United States acquired in the marginal sea off California when it purchased from Mexico in 1848 the territory from which California was later formed. This the United States contests.

The Joint Resolution annexing Texas⁷ provided in part:

"Said State, when admitted into the Union, after ceding to the United States, *all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence* belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain *all the vacant and unappropriated lands lying within its limits*, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States." [Italics added.]

The United States contends that the inclusion of fortifications, barracks, ports and harbors, navy and navy yards, and docks in the cession clause of the Resolution demonstrates an intent to convey all interests of the Republic in the marginal sea, since most of these properties lie side by side with, and shade into, the marginal sea. It stresses the phrase in the Resolution "other property and means pertaining to the public defence." It argues that possession by the United States in the lands underlying the marginal sea is a defense necessity. Texas maintains that the construction of the Resolution both by the United States and Texas has been restricted to properties which the Republic actually used at the time in the public defense.

The United States contends that the "vacant and unappropriated lands" which by the Resolution were retained by Texas do not include the marginal belt. It argues that the purpose of the clause, the circumstances of its inclusion, and the meaning of the words in Texas and federal usage give them a more restricted meaning. Texas replies that since the United States refused to assume the liabilities of the Republic it was to have no claim to the assets of the Republic except the defense properties expressly ceded.

In the *California* case, neither party suggested the necessity for the introduction of evidence. 332 U. S. 24. But Texas makes an earnest plea to be heard on the

¹ 1 Laws, Rep. of Texas, p. 6.

² See the Resolution passed by the Senate March 1, 1837 (Cong. Globe, 24th Cong., 2d Sess., p. 270), the appropriation of a salary for a diplomatic agent to Texas (5 Stat. 170), and the confirmation of a charge d'affaires to the Republic in 1837. 5 Exec. Journ. 17.

³ See 2 Gammel's Laws of Texas, 655, 880, 889, 905 for recognition by France, Great Britain, and The Netherlands.

⁴ 1 Laws, Rep. of Texas, p. 133.

⁵ The traditional three-mile maritime belt is one marine league or three marine miles in width. One marine league is 3.45 English statute miles.

⁶ See Joint Resolution approved December 29, 1845, 9 Stat. 108.

⁷ Joint Resolution approved March 1, 1845, 5 Stat. 797.

facts as they bear on the circumstances of her history which, she says, sets her apart from the other States on this issue.

The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. *United States v. Texas*, 162 U. S. 1; *Kansas v. Colorado*, 185 U. S. 125, 144, 145, 147; *Oklahoma v. Texas*, 253 U. S. 465, 471. If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential.

We conclude, however, that no such hearing is required in this case. We are of the view that the "equal footing" clause of the Joint Resolution admitting Texas to the Union disposes of the present phase of the controversy.

The "equal footing" clause has long been held to refer to political rights and to sovereignty. See *Stearns v. Minnesota*, 179 U. S. 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders. See *Stearns v. Minnesota*, *supra*, pp. 243-245. Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.

Yet the "equal footing" clause has long been held to have a direct effect on certain property rights. Thus the question early arose in controversies between the Federal Government and the States as to the ownership of the shores of navigable waters and the soils under them. It was consistently held that to deny to the States, admitted subsequent to the formation of the Union, ownership of this property would deny them admission on an equal footing with the original States, since the original States did not grant these properties to the United States but reserved them to themselves. (See *Pollard's Lessee v. Hagan*, 3 How. 212, 228-229; *Mumford v. Wardwell*, 6 Wall. 423, 436; *Weber v. Harbor Comm'rs*, 18 Wall. 57, 65-66; *Knight v. U. S. Land Assn.*, 142 U. S. 161, 183; *Shively v. Bowlby*, 152 U. S. 1, 26; *United States v. Mission Rock Co.*, 189 U. S. 391, 404. The theory of these decisions was aptly summarized by Mr. Justice Stone speaking for the Court in *United States v. Oregon*, 295 U. S. 1, 14, as follows:*)

"Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged, in construing either grants by the sovereign of the lands to be held in private ownership or transfer of sovereignty itself. See *Massachusetts v. New York*, 271 U. S. 65, 89. For that reason, upon the admission of a State to the Union, the title of the United States to lands underlying navigable waters within the States passes to it, as incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce."

The "equal footing" clause, we hold, works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the *dominium* and *imperium* in and over this belt which the United States now claims. When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an "equal footing" with all the other States. That act concededly entailed a relinquishment of some of her sovereignty. The United States then took her place as respects foreign commerce,

*The same idea was expressed somewhat differently by Mr. Justice Field in *Weber v. Harbor Comm'rs*, *supra*, pp. 65-66 as follows: "Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General government."

the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation. We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.

We stated the reasons for this in *United States v. California*, p. 35, as follows: "The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States v. Belmont*, 301 U. S. 324, 331-332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement."

And so although *dominium* and *imperium* are normally separable and separate,⁹ this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty.

It is said that there is no necessity for it—that the sovereignty of the sea can be complete and unimpaired no matter if Texas owns the oil underlying it. Yet, as pointed out in *United States v. California*, once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign. Today the controversy is over oil. Tomorrow it may be over some other substance or mineral or perhaps the bed of the ocean itself. If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it. Such is the rationale of the *California* decision, which we have applied to Louisiana's case. The same result must be reached here if "equal footing" with the various States is to be achieved. Unless any claim or title which the Republic of Texas had to the marginal sea is subordinated to this full paramount power of the United States on admission, there is or may be in practical effect a subtraction in favor of Texas from the national sovereignty of the United States. Yet neither the original thirteen States (*United States v. California*, *supra*, pp. 31-32) nor California nor Louisiana enjoys such an advantage. The "equal footing" clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (*Pollard's Lessee v. Hagan*, *supra*) which would produce inequality among the States. For equality of States means that they are not "less or greater, or different in dignity or power." See *Coyle v. Smith*, 221 U. S. 559, 566. There is no need to take evidence to establish that meaning of "equal footing."

Texas in 1941 sought to extend its boundary to a line in the Gulf of Mexico twenty-four marine miles beyond the three-mile limit and asserted ownership of the bed within that area.¹⁰ And in 1947 she put the extended boundary to the outer edge of the continental shelf.¹¹ The irrelevancy of these acts to the issue before us has been adequately demonstrated in *United States v. Louisiana*. The other contentions of Texas need not be detailed. They have been foreclosed by *United States v. California* and *United States v. Louisiana*.

The motions of Texas for an order to take depositions and for the appointment of a Special Master are denied. The motion of the United States for judgment is granted. The parties, or either of them, may before September 15, 1950, submit the form of decree to carry this opinion into effect.

So ordered.

⁹ See the statement of Mr. Justice Field (then Chief Justice of the Supreme Court of California) in *Moore v. Smaw*, 17 Cal. 199, 218-219.

¹⁰ Act of May 18, 1941, L. Texas, 47th Leg., p. 454.

¹¹ Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

MR. JUSTICE REED, with whom MR. JUSTICE MINTON joins, dissenting.

This case brings before us the application of *United States v. California*, 332 U. S. 19, to Texas. Insofar as Louisiana is concerned, I see no difference between its situation and that passed upon in the *California* case. Texas, however, presents a variation which requires a different result.

The *California* case determines, p. 36, that since "paramount rights run to the states in inland waters to the shoreward of the low-water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt." Thus the court held, p. 39, that the Federal Government has power over that belt, an incident of which is "full dominion over the resources of the soil under that water area, including oil." But that decision was based on the premise, pp. 32-34, that the three-mile belt had never belonged to California. The *California* case points out that it was the United States which had acquired this seacoast area for the Nation. Sovereignty over that area passed from Mexico to this country. The Court commented that similar belts along their shores were not owned by the original seacoast states. Since something akin to ownership of the similar area along the coasts of the original states was thought by the Court to have been obtained through an assertion of full dominion by the United States to this hitherto unclaimed portion of the earth's surface, it was decided that a similar right in the California area was obtained by the United States. The contrary is true in the case of Texas. The Court concedes that prior to the Resolution of Annexation, the United States recognized Texas ownership of the three-league area claimed by Texas.¹

The Court holds immaterial the fact of Texas' original ownership of this marginal sea area, because Texas was admitted on an "equal footing" with the other states by the Resolution of Annexation, 5 Stat. 797. The scope of the "equal footing" doctrine, however, has been thought to embrace only political rights or those rights considered necessary attributes of state sovereignty. Thus this Court has held in a consistent line of decisions that, since the original states, as an incident of sovereignty, had ownership and dominion over lands under navigable waters within their jurisdiction, states subsequently admitted must be accorded equivalent ownership. *E. g. Pollard v. Hagan*, 3 How. 212; *Martin v. Waddell*, 16 Pet. 367. But it was an articulated premise of the *California* decision that the thirteen original states neither had asserted ownership nor had held dominion over the three-mile zone as an incident of sovereignty.

"Equal footing" has heretofore brought to a state the ownership of river beds, but never before has that phrase been interpreted to take away from a newly admitted state property that it had theretofore owned. I see no constitutional requirement that this should be done and I think the Resolution of Annexation left the marginal sea area in Texas. The Resolution expressly consented that Texas should retain all "the vacant and unappropriated lands lying within its limits." An agreement of this kind is in accord with the holding of this Court that ordinarily lands may be the subject of compact between a state and the Nation. *Stearns v. Minnesota*, 179 U. S. 223, 245. The Court, however, does not decide whether or not "the vacant and unappropriated lands lying within its limits" (at the time of annexation) includes the land under the marginal sea. I think that it does include those lands. *Cf. Hynes v. Grimes Packing Co.*, 337 U. S. 86, 110. At least we should permit evidence of its meaning.

Instead of deciding this question of cession, the Court relies upon the need for the United States to control the area seaward of low water because of its international responsibilities. It reasons that full dominion over the resources follows this paramount responsibility, and it refers to the California discussion of the point. 332 U. S. at 35. But the argument based on international responsibilities prevailed in the *California* case because the marginal sea area was staked out by the United States. The argument cannot reasonably be extended to Texas without a holding that Texas ceded that area to the United States.

The necessity for the United States to defend the land and to handle international affairs is not enough to transfer property rights in the marginal sea from Texas to the United States. Federal sovereignty is paramount within national boundaries, but federal ownership depends on taking possession, as the *California* case holds; on consent, as in the case of places for federal use; or on purchase, as in the case of Alaska or the Territory of Louisiana. The needs of

¹ See the statement in the Court's opinion as to the chapters of Texas history.

defense and foreign affairs alone cannot transfer ownership of an ocean bed from a state to the Federal Government any more than they could transfer iron ore under uplands from state to federal ownership. National responsibility is no greater in respect to the marginal sea than it is toward every other particle of American territory. In my view, Texas owned the marginal area by virtue of its original proprietorship; it has not been shown to my satisfaction that it lost it by the terms of the Resolution of Annexation.

I would deny the United States motion for judgment.

MR. JUSTICE FRANKFURTER.†

Time has not made the reasoning of *United States v. California*, 332 U. S. 19, more persuasive but the issue there decided is no longer open for me. It is relevant, however, to note that in rejecting California's claim of ownership in the off-shore oil the Court carefully abstained from recognizing such claim of ownership by the United States. This was emphasized when the Court struck out the proprietary claim of the United States from the terms of the decree proposed by the United States in the *California* case.*

I must leave it to those who deem the reasoning of that decision right to define its scope and apply it, particularly to the historically very different situation of Texas. As is made clear in the opinion of Mr. Justice REED, the submerged lands now in controversy were part of the domain of Texas when she was on her own. The Court now decides that when Texas entered the Union she lost what she had and the United States acquired it. How that shift came to pass remains for me a puzzle.

SUPREME COURT OF THE UNITED STATES

No. 13 Orig., October Term, 1950

UNITED STATES OF AMERICA, PLAINTIFF v. STATE OF TEXAS

DECREE

(340 U. S. 900)

This cause came on to be heard on the motion for judgment filed by the plaintiff and was argued by counsel.

For the purpose of carrying into effect the conclusions of this Court as stated in its opinion announced June 5, 1950, it is ORDERED, ADJUDGED, AND DECREED AS follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Texas, and outside of the inland waters, extending seaward to the outer edge of the continental shelf and bounded on the east and southwest, respectively, by the eastern boundary of the State of Texas and the boundary between the United States and Mexico. The State of Texas has no title thereto or property interest therein.

2. The State of Texas, its privies, assigns, lessees, and other persons claiming under it are hereby enjoined from carrying on any activities upon or in the submerged area described in paragraph 1 hereof for the purpose of taking or removing therefrom any petroleum gas or other valuable mineral products, and from taking or removing therefrom any petroleum, gas, or other valuable mineral products, except under authorization first obtained from the United States. On appropriate showing, the United States may obtain the other injunctive relief prayed for in the complaint.

3. The United States is entitled to a true, full, and accurate accounting from the State of Texas of all or any part of the sums of money derived by the State from the area described in paragraph 1 hereof subsequent to June 5, 1950, which are properly owing to the United States under the opinion entered in this case on June 5, 1950, this decree, and the applicable principles of law.

†[REPORTER'S NOTE.—This is also the opinion of Mr. Justice FRANKFURTER in No. 12, Original, *United States v. Louisiana*, ante, p. 699.]

*The decree proposed by the United States read in part:

"1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights of proprietorship in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean. . . ."

The italicized words were omitted in the Court's decree. 332 U. S. 804, 805.

4. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

DECEMBER 11, 1950.

MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

APPENDIX B

(COMMITTEE NOTE.—Because of its applicability to certain substitute legislation that has been widely discussed in connection with action on S. J. Res. 20, as amended, there is set forth below the President's veto message on H. J. Res. 225, 79th Cong., a quitclaim measure. Although H. J. Res. 225 had passed the House of Representatives in the 79th Cong. by a vote of nearly 3 to 1, the House sustained the President's veto [92 Congressional Record 10745] and as a result the issue of overriding it never came up in the Senate.)

(H. Doc. No. 765, 79th Cong., 2d sess.)

To the House of Representatives:

I return herewith, without my signature, House Joint Resolution 225, entitled "A joint resolution to quiet the titles of the respective States, and others, to lands beneath tidewaters and lands beneath navigable waters within the boundaries of such States and to prevent further clouding of such titles."

The purpose of this measure is to renounce and disclaim all right, title, interest, claim, or demand of the United States in "lands beneath tidewaters," as defined in the joint resolution, and in lands beneath all navigable waters within the boundaries of the respective States, and to the minerals in such lands. The phrase "lands beneath tidewaters" is defined so broadly as to include all lands, either submerged or reclaimed, situated under the ocean beyond the low-water mark and extending out to a line three geographical miles distant from the coast line or to the boundary line of any State whose boundary, at the time of the admission of the State to the Union, extended oceanward beyond three geographical miles. Lands acquired by the United States from any State or its successors in interest, or through conveyance or condemnation, would be excluded from the operation of the measure. There would also be excluded the interest of the United States in that part of the Continental Shelf (lands under the ocean contiguous to and forming part of the land mass of our coasts) which lies more than 3 miles beyond the low-water mark or the boundary of any particular State.

On May 29, 1945, at my direction, the then Attorney General filed a suit in the United States district court at Los Angeles, in the name of the United States, to determine the rights in the land and minerals situated in the bed of the Pacific Ocean adjacent to the coast of California and within the 3-mile limit above described. Thereafter, in order to secure a more expeditious determination of the matter, the present Attorney General brought suit in the Supreme Court of the United States. The case in the district court was dismissed. I am advised by the Attorney General that the case will be heard in the Supreme Court and will probably be decided during the next term of the Court.

The Supreme Court's decision in the pending case will determine rights in lands lying beyond ordinary low-water mark along the coast extending seaward for a distance of 3 miles. Contrary to widespread misunderstanding, the case does not involve any tidelands, which are lands covered and uncovered by the daily ebb and flow of the tides; nor does it involve any lands under bays, harbors, ports, lakes, rivers, or other inland waters. Consequently the case does not constitute any threat to or cloud upon the titles of the several States to such lands, or the improvements thereon. When the joint resolution was being debated in the Senate, an amendment was offered which would have resulted in giving an outright acquittance to the respective States of all tidelands and all lands under bays, harbors, ports, lakes, rivers, and other inland waters. Proponents of the present measure, however, defeated this amendment. This clearly emphasized that the primary purpose of the legislation was to give to the States and their lessees any right, title, or interest of the United States in the lands and minerals under the waters within the 3-mile limit.

The ownership of the land and resources underlying this 3-mile belt has been a subject of genuine controversy for a number of years. It should be resolved appropriately and promptly. The ownership of the vast quantity of oil in such areas presents a vital problem for the Nation from the standpoint of national

defense and conservation. If the United States owns these areas, they should not be given away. If the Supreme Court decides that the United States has no title to or interest in the lands, a quitclaim from the Congress is unnecessary.

The Attorney General advises me that the issue now before the Supreme Court has not been heretofore determined. It thus presents a legal question of great importance to the Nation, and one which should be decided by the Court. The Congress is not an appropriate forum to determine the legal issue now before the Court. The jurisdiction of the Supreme Court should not be interfered with while it is arriving at its decision in the pending case.

For the foregoing reasons I am constrained to withhold my approval of the joint resolution.

HARRY S. TRUMAN.

THE WHITE HOUSE, August 1, 1946.

H. J. Res. 225

SEVENTH-NINTH CONGRESS OF THE UNITED STATES OF AMERICA, AT THE SECOND SESSION, BEGUN AND HELD AT THE CITY OF WASHINGTON ON MONDAY, THE FOURTEENTH DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND FORTY-SIX

JOINT RESOLUTION To quiet the titles of the respective States, and others, to lands beneath tidewaters and lands beneath navigable waters within the boundaries of such States and to prevent further clouding of such titles

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in recognition of the title and interest in the several States, and in others as hereinafter mentioned, since July 4, 1776, or since their formation and admission to the Union, the United States of America hereby renounces and disclaims any right, title, interest, or claim, except as hereinafter excepted and retained, in and to all lands beneath tidewaters and all lands beneath navigable waters within the boundaries of each of the respective States; and in further recognition of such titles and interests, the United States of America hereby releases, remises, and quitclaims all right, title, interest, claim or demand of the United States of America in and to all lands beneath tidewaters, and all lands beneath navigable waters within the boundaries of each of the respective States, unto each of such States or the persons lawfully entitled thereto under the law as established by the decisions of the courts of such State, and unto the respective grantees or successors in interest thereof, and unto the respective present lawful owners of such lands of which title has been confirmed by official action of the United States of America; excepting therefrom such lands beneath tidewaters and such lands beneath navigable waters as have been lawfully acquired by the United States of America from any State or from any person in whom title had vested under the decisions of the courts of such State, or their respective grantees, or successors in interest, by cession, grant, quitclaim, or condemnation, or from any other owner or owners thereof by conveyance or by condemnation, providing such owner or owners had lawfully acquired the right, title, or interest of any such State; and excepting therefrom such lands beneath tidewaters and such lands beneath navigable waters, and such interests therein, as the United States is lawfully entitled to under the law as established by the decisions of the courts of the State in which the land is situated, or as are held by the United States in trust for the benefit of any tribe, band, or group of Indians or for individual Indians; retaining, however, to the United States of America its present powers of regulation and control for the purposes of commerce, navigation, and the national defense.

As used in this joint resolution, the phrase "lands beneath tidewaters" shall include (1) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and oceanward to a line three geographical miles distant from the coast line and to the boundary line of each respective State where in any case such boundary line extends oceanward beyond three geographical miles, and (2) all lands formerly beneath tidewaters, as herein defined, which have been filled or reclaimed; the phrase "lands beneath navigable waters" shall include (1) all other lands covered by waters which are navigable under the laws of the United States, and (2) all lands formerly beneath navigable waters, as herein defined, which have been filled or reclaimed.

The United States excepts from this disclaimer and retains all right, title, and interest claimed and asserted by Presidential Proclamation Numbered 2667 of September 28, 1945, or otherwise to the subsoil and sea bed of or the resources

in the Continental Shelf lying oceanward from the area described in the first clause (1) of the preceding paragraph.

SAM RAYBURN,
Speaker of the House of Representatives.
 KENNETH MCKELLAR,
President of the Senate pro tempore.

[Endorsement on back of bill:]

I certify that this Act originated in the House of Representatives.

SOUTH TRIMBLE, *Clerk.*

APPENDIX C

POLICY OF THE UNITED STATES WITH RESPECT TO THE NATURAL RESOURCES OF THE SUBSOIL AND SEA BED OF THE CONTINENTAL SHELF

(By the President of the United States of America)

A PROCLAMATION (NO. 2607)

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new resources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

[SEAL]

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Acting Secretary of State.

SEPTEMBER 28, 1945.

* * * * *

EXECUTIVE ORDER 9633

RESERVING AND PLACING CERTAIN RESOURCES OF THE CONTINENTAL SHELF UNDER THE CONTROL AND JURISDICTION OF THE SECRETARY OF THE INTERIOR

By virtue of and pursuant to the authority vested in me as President of the United States, it is ordered that the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States declare this day by proclamation to appertain to the United States and to be subject to its jurisdiction and control, be and they are hereby reserved, set aside, and placed under the jurisdiction and control of the Secretary of the Interior for administrative purposes, pending the enactment of legislation in regard thereto. Neither this Order nor the aforesaid proclamation shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the several states, relating to the ownership or control of the subsoil and sea bed of the continental shelf within or outside of the 3-mile limit.

HARRY S. TRUMAN.

THE WHITE HOUSE,
September 28, 1945.

APPENDIX E

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., July 20, 1950.

Hon. JOSEPH C. O'MAHONEY,
United States Senate, Washington 25, D. C.

DEAR SENATOR O'MAHONEY: In accordance with your oral request of yesterday, I am glad to send to you:

(1) A copy of an opinion which was rendered on August 8, 1947, by the Solicitor's office regarding the applicability of the Mineral Leasing Act of 1920 to the submerged lands of the Continental Shelf;

(2) A copy of an opinion which was rendered by the Attorney General on August 29, 1947, concerning the same subject; and

(3) A copy of an official statement which was made by Secretary of the Interior Ickes on this subject in testifying before the Senate Judiciary Committee on February 5, 1946.

Sincerely yours,

MASTIN G. WHITE, *Solicitor*.

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

MINERAL LEASING ACT

August 8, 1947

SUBMERGED LANDS—CONTINENTAL SHELF—OIL AND GAS LEASES

The Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437, 30 U. S. C. 181 et seq.), does not authorize the issuance of oil and gas leases with respect to the submerged lands below low tide off the coasts of the United States and outside the inland waters of the States.

MASTIN G. WHITE, *Solicitor*.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., August 8, 1947.

Memorandum

To: The Secretary.

From: The Solicitor.

Subject: Applicability of Mineral Leasing Act to submerged coastal areas below low tide.

You have orally requested my opinion on the question whether the Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437, 30 U. S. C. 181 et seq.), authorizes the issuance of oil and gas leases with respect to the submerged lands below low tide off the coasts of the United States and outside the inland waters of the States. This question arises by reason of the fact that there are awaiting disposition in the Department a number of applications for oil and gas leases in submerged areas of the Pacific Ocean and the Gulf of Mexico below low tide and outside the inland waters of the adjacent States.

On September 28, 1945, the President issued Proclamation No. 2667, announcing that the "United States regards the natural resources of the subsoil and seabed of the Continental Shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control" (10 F. R. 12303). And by Executive Order No. 9633 of the same date, the resources of the Continental Shelf were placed under the jurisdiction and control of the Secretary of the Interior "for administrative purposes, pending the enactment of legislation in regard thereto." (10 F. R. 12305.) On June 23, 1947, the Supreme Court held in *United States v. California* (Original No. 12) that the Federal Government has paramount rights in and power over the 3-mile marginal belt along the coast, "an incident to which is full dominion over the resources of the soil under that water area, including oil" (slip copy, p. 17).

The answer to the question submitted by you turns on the construction of the following portion of section 1 of the Mineral Leasing Act, as amended:¹

"That deposits of coal, phosphate, sodium, potassium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the act known as the Appalachian Forest Act * * *, and those in incorporated cities, towns, and villages, and in national parks and monuments, those acquired under other acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this act * * *."

It is conceivable that some of the submerged land areas and minerals may turn out to be in one of the categories of lands expressly excluded from the provisions of the Mineral Leasing Act (e. g., naval petroleum reserves). As to them, of course, no problem will arise. In the main, however, this will not be the case.

With regard to the submerged lands and mineral deposits that are not expressly excluded from the provisions of the act, they appear at first glance to be included in the phrase "deposits * * * and lands containing such deposits owned by the United States" quoted above. However, the Attorney General has held that this language is limited in its application to the "public lands" of the United States,² principally by reason of the presence of the words "public domain" in the title of the act.³ Therefore, the Mineral Leasing Act is a statute providing generally for the disposition of "public lands."

Land situated below high-water mark has not been regarded heretofore as included in the term "public lands."⁴ For this reason alone, it may be concluded that the Mineral Leasing Act does not apply to the submerged lands, as they are, of course, below low tide. In fact, in the Government's brief in the California case, the Attorney General so argued (p. 195).

Apart from the reasoning indicated above, the Mineral Leasing Act, like other general public land laws, applies to any particular category of lands only if Con-

¹ The language quoted is from the amendatory act of August 8, 1946 (Public Law 696, 79th Cong., 2d sess., ch. 916, sec. 1, 60 Stat. 950); it is in no material respect different from that used in the original 1920 act, 41 Stat. 437.

² 40 Op. Atty. Gen., No. 1 (Jan. 3, 1941); 34 Op. Atty. Gen. 171 (1924); see p. 196. Government's brief, *United States v. California*, United States Supreme Court (Original No. 12).

³ The words "public domain" appear in the title of the amendatory act of August 8, 1946, as well as in the original act of February 25, 1920.

⁴ *Barney v. Krokuk*, 94 U. S. 324, 338; *Mann v. Tacoma Land Co.*, 153 U. S. 273; 284; Frederick A. Curtiss et al., General Land Office Decision, September 18, 1934, affirmed by Department February 7, 1935 A-18167 unpublished.

gress has indicated that such lands are held for disposal under it.⁵ For the reasons that follow, I do not believe that Congress has indicated that the submerged coastal lands are held for disposal under the Mineral Leasing Act.

In one aspect, the act is clearly inconsistent with any assumption that it was intended to apply to submerged lands. The act contains provisions that lands affected by it are to be surveyed and described by the legal subdivisions of the public land surveys,⁶ and the public land surveys have not heretofore extended beyond high tide.⁷

Furthermore, as the Court said in its opinion in the California case, "the record plainly demonstrates that until the California oil issue began to be pressed in the thirties, neither the States nor the Government had reason to focus attention on the question of which of them owned or had paramount rights in or power over the 3-mile belt" (slip copy, p. 18). No suit was brought by the Federal Government until May 29, 1945, when an action was brought by the United States against the Pacific Western Oil Co. in the United States District Court for the Southern District of California. That suit was thereafter dismissed by the Government at the same time that it filed the original suit against California in the Supreme Court on October 19, 1945. In the latter suit, the Government took the position (brief, p. 70), and the Court in its opinion agreed (slip copy, pp. 15, 17), that the case judicially raised the issue of Federal versus State ownership for the first time. Therefore, until the Court decided the case in favor of the United States on June 23, 1947, no one could have known with any degree of certainty whether the Federal Government or the States owned this vast area of coastal submerged lands. Consequently, in the absence of evidence to the contrary (and there is none), we cannot assume that Congress intended on February 25, 1920, and August 6, 1946, the respective dates of the original Mineral Leasing Act and the amendatory act, to address itself to these submerged lands when it used in section 1 of the act general language indicating that the act was to be applicable to "* * * lands * * * owned by the United States."

Congress recently enacted the Mineral Leasing Act for Acquired Lands (Public Law 382, 80th Cong., approved August 7, 1947). The "acquired lands" which are the subject of the act are, so far as relevant, defined in section 2 to "include all lands heretofore or hereafter acquired by the United States to which the 'mineral leasing laws' have not been extended * * *". In the same section the term "mineral leasing laws" is defined to include the act of February 25, 1920, and all acts amendatory of or supplementary to it. It is significant that while this legislation was being considered in the House (as H. R. 3022), it was amended on July 23, 1947—a month after the decision of the Supreme Court in the California case—so as expressly to exclude the submerged lands and the Continental Shelf from its purview (sec. 3 of the act; Congressional Record, July 23, 1947, p. 9973). The language which conceivably could have been regarded as including the submerged lands and the Continental Shelf in the absence of the amendment was the reference to lands "to which the 'mineral leasing laws' have not been extended." The reason for the amendment was not discussed in either the House or the Senate (Congressional Record, July 23, 1947, p. 9973; July 24, 1947, pp. 10095, 10157). In adopting it, Congress may be regarded as assuming that the mineral leasing laws, including the 1920 act, as amended, had not been extended to the submerged lands, and, therefore, that such lands would be covered by the new act unless expressly excluded from its provisions.⁸

Finally, I should point out that in executing on July 26, 1947, the stipulation in the California case regarding interim oil and gas operations in the submerged lands off the coast of California pending the establishment of the line separating the inland waters of California from the marginal seas, the Attorney General held by implication that the Mineral Leasing Act was not applicable to the submerged land areas. If the act had been applicable to such areas, the stipulation presumably would have been unauthorized.

For the reasons indicated above, it is my opinion that the Mineral Leasing Act of February 25, 1920, as amended, does not authorize the issuance of oil

⁵ See *Oklahoma v. Texas*, 258 U. S. 574, 599-602; *West v. Work*, 11 F. (2d) 823, cert. denied, 271 U. S. 689.

⁶ Oil and gas, secs. 13 and 14, 41 Stat. 441, 442, 49 Stat. 675, 676, 30 U. S. C. 223; oil shale 30 U. S. C. 241; phosphate 30 U. S. C. 212; sodium 30 U. S. C. 262; potash, 30 U. S. C. 232.

⁷ *Barney v. Keokuk*, 94 U. S. C. 324, 338; *Mann v. Tacoma Land Co.*, 153 U. S. 273, 284; Manual of Instructions, Survey of Public Lands, Department of the Interior, 1930, Reprint 1934, p. 5; Frank Burns, 10 L. D. 365, 369 (1890).

⁸ Another possible inference is that Congress viewed the submerged lands as acquired rather than as public lands. (See secs. 2 and 3.) And acquired lands were held by the Attorney General to be outside the scope of the Mineral Leasing Act. (See note 2, supra.)

and gas leases with respect to the submerged lands below low tide off the coasts of the United States and outside the inland waters of the States.

(Signed) MASTIN G. WHITE, *Solicitor*.

APPENDIX D

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., August 29, 1947.

The honorable the SECRETARY OF THE INTERIOR.

MY DEAR MR. SECRETARY: You have asked my opinion on the question whether the Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437, 30 U. S. C. 181, et seq.), authorizes the issuance of oil and gas leases with respect to the submerged lands below low tide off the coasts of the United States and outside the inland waters within the States.

In considering the steps which should be taken to protect the interests of the United States in the submerged lands off the coast of California, following the decision of the United States Supreme Court rendered on June 23, 1947, in *United States v. California*, No. 12 Original, October term, 1946, one of the questions which your Department and this Department had to examine was whether the provisions of the Mineral Leasing Act required that the procedures set forth in that act be followed with regard to the property which the Supreme Court held in that case to be that of the United States. The Acting Solicitor General and the Solicitor of your Department concluded that the act imposed no such requirement. After consideration I reached the same conclusion, and I now adhere to it. The stipulations were signed on that basis.

Sincerely yours,

(Signed) TOM C. CLARK,
Attorney General.

OFFICIAL STATEMENT RELATIVE TO APPLICABILITY OF MINERAL LEASING ACT TO SUBMERGED COASTAL LANDS

Testimony of Secretary of the Interior Harold I. Ickes before the Senate Committee on the Judiciary, February 5, 1946, on Senate Joint Resolution 48 and House Joint Resolution 225, Seventy-ninth Congress:

"Implicit in these recommendations is the thought that the Mineral Leasing Act of 1920 is not applicable to submerged lands. A reading of the act will reveal that in many particulars its provisions would not fit the problems presented in the administration of submerged lands. For example, there is the matter of acreage limitation. Another problem relates to royalties and the distribution, if any, of receipts from these lands. More importantly, the problem of the submerged coastal lands was not considered when the act was passed, and Congress is entitled to and should fix its policy with specific reference to these lands. These, however, are matters more properly to be presented at another time and to a different committee" (p. 11 of printed hearings).

APPENDIX E

(COMMITTEE NOTE.—Because of the recent interest in applications under "script," there is set forth below the headnote to the formal legal opinion of the Solicitor of the Department of the Interior, dated June 25, 1951, holding that submerged lands beneath the open ocean are not subject to scrip location.)

DEPARTMENT OF THE INTERIOR.
June 25, 1951.

SCRIP APPLICATIONS FOR SUBMERGED COASTAL LANDS

Valentine, Gerard, Crow, Porterfield, Wyandott, Sioux Half Breed Forest Lieu, Soldiers' Additional, Public lands, withdrawals, mineral lands surveys, occupancy under claim of right.

Tidelands and lands beneath navigable inland waters belong to the States within whose boundaries they are situated (or to the States' grantees).

Only public lands can be selected under scrip.

The term "public lands," when used in Federal provisions of law relating to the disposition of land, does not include submerged coastal lands.

Submerged coastal lands cannot be selected under public-land scrip.

Withdrawn lands are not subject to scrip locations.

Land known to be valuable for oil is "mineral" land for the purpose of scrip location.

Submerged coastal lands are not subject to being surveyed.

Land occupied by another person under a claim of right cannot be selected under scrip as vacant or unoccupied or unappropriated land.

APPENDIX C

(The so-called Norwegian Fisheries case recently decided by the International Court of Justice at The Hague has attracted such widespread attention in connection with discussion of the submerged-lands issue within the United States that the committee makes public herewith a statement by the Solicitor General of the United States on the relevancy of the case, together with a summary of the majority opinion.)

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR GENERAL,
January 21, 1952.

HON. JOSEPH C. O'MAHONEY,
United States Senate, Washington, D. C.

MY DEAR SENATOR: The Attorney General has asked me to reply to your letter of January 12, in which you request a statement respecting the recent decision of the International Court of Justice in the Anglo-Norwegian Fisheries case (judgment of December 18, 1951, I. C. J. Reports 1951, p. 116) and the effect of that decision on the issue of Federal or State control over the mineral resources of the submerged lands.

The question before the International Court in the Fisheries case did not relate to the nature or extent of the control to be exercised by a coastal nation in adjacent waters and the decision thus has no bearing on the issue of Federal as against State control over submerged lands. The sole issue before the Court was the validity of certain base lines prescribed by Norway for the measurement of its territorial sea, or marginal sea, wherein exclusive fishing privileges have been reserved for Norwegian vessels.

The case of *United States v. California* (332 U. S. 19), in which the basic issue as to Federal control over the marginal sea has already been decided, is still before the Supreme Court for the determination of the base line of the marginal sea along portions of the California coast, and hearings on the matter are scheduled to begin before the special master on Wednesday January 23. Any effect of the ruling by the International Court on these issues will be considered and determined in that proceeding, and this office is now at work on the subject. Our studies have not been completed, nor have we yet been able to finish our consultations with other departments directly concerned. Until then it would not be possible to give any detailed opinion, but, for the purpose of the legislation being considered by the Committee on Interior and Insular Affairs, of which you are chairman, you should be informed that nothing in the International Court's opinion seems to require any modification of the legal position of the United States with respect to the determination of the location of the marginal sea.

The question as to what are inland waters, such as bays, etc., as distinguished from the open sea, will, of course, be determined by the Court in the pending proceedings, and there does not seem to be any reason why the Congress should give consideration to matters which do not affect the necessity for the Government to develop the areas subject to its sovereignty and control. Senate Joint Resolution 20, introduced by you, does not purport to determine the exact boundaries of those areas, and the Court will, in the course of pending litigation, determine and apply the proper principles.

For your information, I am enclosing a short summary of the majority opinion of the International Court in the Fisheries case.

Sincerely,

PHILIP B. PERLMAN, *Solicitor General.*

ANGLO-NORWEGIAN FISHERIES CASE

(I. C. J. Reports 1951, p. 116)

FACTS

For three centuries British fishermen refrained from fishing in Norwegian coastal waters. Beginning in 1906, British vessels appeared in these waters and Norway took measures to specify the limits within which fishing was prohibited to foreigners. Numerous incidents occurred, beginning in 1911, and in 1935 Norway enacted a decree delimiting its exclusive fisheries zone along its northwest coast, north of 66°28'48". Pending discussions between the parties, Norway refrained from enforcing this decree. In 1948 enforcement began and British ships were arrested. Great Britain then brought this suit before the International Court of Justice.

The 1935 decree relies on earlier decrees of 1812, 1869, 1881, and 1889 covering portions of the southern coast of Norway, and proceeds to define the Norwegian fisheries zone (4 miles in width) as being within lines "parallel with straight base lines drawn between fixed points on the mainland, on islands or rocks," the points so connected by the base lines being the several islands or islets farthest from the mainland. In many instances the distances traversed by the base lines across water areas are from 20 to 40 miles.

It was admitted by Great Britain that for the purposes of this dispute Norway is entitled to claim a fisheries zone 4 miles in width.

QUESTION PRESENTED

"* * * the validity or otherwise under international law of the lines of delimitation of the Norwegian fisheries zone laid down by the royal decree of 1935 * * *."

DECISION

The method employed for delimitation of the fisheries zone by the 1935 decree and the base lines fixed by the decree are not contrary to international law (vote, 10 to 2).

Hackworth concurs in result for "historic" reasons.

Alvarez and Hsu Mo file separate opinions, questioning certain base lines (making the vote 8 to 4 on this point).

McNair and Read dissent.

OPINION OF THE COURT

Although the decree refers to the Norwegian fisheries zone, the zone delimited by the decree is the "territorial sea" (p. 125).

"The coastal zone concerned * * * includes the coast of the mainland of Norway and all the islands, islets, rocks, and reefs, known by the name of the 'skjaergaard' (literally, rock rampart), together with all Norwegian internal and territorial waters. The coast * * * is of a very distinctive configuration. Very broken * * * it constantly opens out into indentations * * *. To the west, the land configuration stretches out into the sea: the large and small islands * * * the islets, rocks, and reefs * * * are but in truth an extension of the Norwegian mainland." [The number of insular formations is estimated at 120,000.] (P. 127.)

"The coast of the mainland does not constitute, as it does in practically all other countries, a clear dividing line between land and sea. What matters, what really constitutes the Norwegian coast line, is the outer line of the 'skjaergaard' " (p. 127).

"The whole of this region is mountainous * * * so that the Norwegian coast, mainland, and 'skjaergaard,' is visible from far off.

"Along the coast are * * * fishing grounds * * * known to Norwegian fishermen and exploited by them from time immemorial * * * always located and identified by means of the method of alignments * * *.

"In these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing.

"Such are the realities which must be borne in mind * * *" (pp. 127-128).

"The Court has no difficulty in finding that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, * * *" (p. 128).

"The Court finds itself obliged to decide whether the relevant low-water mark is that of the mainland or of the 'skjaergaard.' Since the mainland is bordered in its western sector by the 'skjaergaard,' which constitutes a whole with the mainland, it is the outer line of the 'skjaergaard' which must be taken into account in delimiting the belt of Norwegian territorial waters. This solution is dictated by geographic realities" (p. 128).

"* * * the 'skjaergaard' constitutes a whole with the Norwegian mainland; the waters between the base lines of the belt of territorial waters and the mainland are internal waters" (p. 132).

* * *
 "The Norwegian Government does not deny that there exist rules of international law to which this delimitation must conform" (p. 126).

"* * * The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law" (p. 132).

* * *
 "Three methods have been contemplated to effect the application of the low-water mark rule. * * * following the coast in all its sinuosities * * * the arcs of circles method * * * the general direction of the coast" (pp. 128-129).

"The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea * * *."

"* * * in order to apply this principle, several States have deemed it necessary to follow the straight base-lines method and * * * have not encountered objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast where it was solely a question of giving simpler form to the belt of territorial waters" (pp. 129-130).

"There is no valid reason * * * not also to draw them between islands, islets, and rocks across the sea areas separating them * * *" (p. 130).

"The Norwegian Government admits that the base lines must be drawn in such a way as to respect the general direction of the coast and that they must be drawn in a reasonable manner" (pp. 140-141).

"[As to bays] * * * although the 10-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the 10-mile rule has not acquired the authority of a general rule of international law" (p. 131).

"In any event the 10-mile rule would appear to be inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast." (p. 131).

"[As to the] base lines drawn across the waters lying between the various formations of the 'skjaergaard' * * * the practice of States does not justify the formulation of any general rule of law. The attempts * * * to subject groups of islands or coastal archipelagoes to * * * limitations concerning bays * * * have not got beyond the stage of proposals" (p. 131).

"Furthermore, apart from any question of limiting the lines to 10 miles, it may be that several lines can be envisaged. In such cases the coastal State would seem to be in the best position to appraise the local conditions dictating the selection" (p. 131).

"The Indreleia [between the mainland and the offshore islands] is not a strait at all, but rather a navigational route prepared as such by means of artificial aids * * *. [It does not have] a status different from that of the other waters included in the 'skjaergaard'" (p. 132).

"Thus the Court, confining itself for the moment to the Conclusions of the United Kingdom, finds that the Norwegian Government in fixing the base-lines for the delimitation of the Norwegian fisheries zone by the 1935 Decree has not violated international law" (p. 132).

* * *
 "Although * * * the act of delimitation is necessarily a unilateral act, * * * the validity of the delimitation with regard to other States depends upon international law" (p. 132).

"* * * certain basic considerations inherent in the nature of the territorial sea, bring to light certain criteria * * *

"* * * the drawing of base-lines must not depart to any appreciable extent from the general direction of the coast.

"The real question * * * is in effect whether certain sea areas * * * are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

"Finally, there is one consideration * * * which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage." (p. 133)

"By 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title" (p. 130).

"The Norwegian Government does not rely upon history to justify exceptional rights * * *; it invokes history, together with other factors, to justify the way in which it applies the general law" (p. 133).

Norway's "traditional system of delimitation: base-points provided by the islands or islets farthest from the mainland, the use of straight lines joining up these points, the lack of any maximum length for such lines" (p. 135) is established by the decrees of 1812 and 1869 and interpretations and constructions of those decrees (pp. 134-136).

"* * * according to the Norwegian system, the base lines must follow the general direction of the coast, which is in conformity with international law" (p. 135).

"The Court * * * further finds that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States" (pp. 136-137).

"* * * neither the * * * decrees in 1869 and 1889 * * * nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute * * * the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of a historical consideration which would make it enforceable as against all States" (p. 138).

"Great Britain was * * * aware of and interested in the question" (p. 139).

"The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom" (p. 139).

"The Court is thus led to conclude that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast; that even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of the governments bears witness to the fact that they did not consider it to be contrary to international law" (p. 139).

The delimitations of the sector of Svaerholthavet and that of Lopphavet (criticized by Great Britain) are not unjustifiable deviations from the general direction of the coast (pp. 141-142).

"In order properly to apply the rule * * * one cannot confine oneself to examining one sector of the coast alone, except in a case of manifest abuse; nor can one rely on the impression that may be gathered from a large scale chart of this sector alone" (p. 142).

"[The line] appears to the Court to have been kept within the bounds of what is moderate and reasonable" (p. 142).